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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

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| TRANSMITTAL FORM (to be used for all correspondence after initial filing) | Application Number | 08/977,846 | |
| | Filing Date | November 25, 1997 | |
| | First Named Inventor | John O. RYAN | |
| | Art Unit | 3628 | |
| | Examiner Name | T. Dixon | |
| Total Number of Pages in This Submission | 5 | Attorney Docket Number | 549222000101 |

ENCLOSURES (Check all that apply)

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| <input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition (4 pages) <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD | <input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Receipt Postcard |
| Remarks | | |

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

| | | | |
|--------------|--|----------|--------|
| Firm Name | MORRISON & FOERSTER LLP (Customer No. 25226) | | |
| Signature | <i>Norman R. Klivans</i> | | |
| Printed name | Norman R. Klivans | | |
| Date | April 12, 2007 | Reg. No. | 33,003 |

I hereby certify that this paper is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV 582593125 US, on the date shown below in an envelope addressed to: Chief Administrative Patent Judge, Board of Patent Appeals and Interferences, MS Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: April 12, 2007

Signature: _____

(Georgina Matos)

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV 582593125 US, in an envelope addressed to: Chief Administrative Patent Judge, Board of Patent Appeals and Interferences, MS Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Date: April 12, 2007 Signature: _____

Georgina Matos
(Georgina Matos)

Docket No.: 549222000101
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
John O. RYAN

Application No.: 08/977,846

Confirmation No.: 3572

Filed: November 25, 1997

Art Unit: 3628

For: METHOD AND SYSTEM FOR
INFORMATION DISSEMINATION WITH
USER MENU INTERFACE (AS AMENDED)

Examiner: T. Dixon

PETITION UNDER 37 CFR §41.3

Chief Administrative Patent Judge
Board of Patent Appeals and Interferences
MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant/Appellant submits this Petition in the above appealed case responsive to the Notification of Non-Compliant Appeal Brief dated March 15, 2007. Contemporaneous with this paper but under separate cover, a revised Appeal Brief has been filed.

This petition requests that (1) the original Appeal Brief be entered; and (2) in the alternative, the revised Appeal Brief filed responsive to the Notification be entered.

Notification of Non-Compliant Appeal Brief

The Patent Office issued its Notification of Non-Compliant Appeal Brief dated March 15, 2007. The original Appeal Brief was filed January 9, 2007.

The Notification of Non-Compliant Appeal Brief, it is respectfully submitted, is not in accordance with the rules and goes beyond the rules in making requirements not present in the rules.

Grounds for Petition

It is respectfully submitted that the Notification of Non-Compliant Appeal Brief substantively goes beyond the rules in making requirements not required therein. Further, it is understood the Notification of Non-Compliant Appeal Brief was not made by the Examiner but by an official acting under the authority of the Board of Patent Appeals and Interferences at the Patent Appeal Center so this petition is made per Rule 41.3.

Notice of Non-Compliant Appeal Brief Goes Beyond the Rules

The Notification of Non-Compliant Appeal Brief substantively makes requirements not stated in the rules.

In paragraph 4 of the Notification, the Notification states at the bottom of the paper "The brief does not map independent claim(s) (1 and 58) to the specification by page and line number and to the drawing, if any, by reference character."

There is no such requirement in the rules. Rule 41.37 states in paragraph 5 "Summary of claimed subject matter. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and the drawing, if any, by reference characters." There is no requirement to "map" anything, or to make an element-by-element or limitation-by-limitation reference to the specification. The originally filed Appeal Brief did at pages 2 through 3 point to the various pages and lines in the specification which describe the subject matter of the claims, and refers to the figures by reference number also.

(It is also noted that the reference in the rules to "shall refer to the specification by page and line number" is now anachronistic since line numbers are no longer used in patent specifications, but only paragraph numbers.)

Therefore, it is respectfully submitted that the originally filed Appeal Brief did conform to this portion of the rules.

Appendices

The Notification in paragraph 10 stated that there was no reference to a related proceedings appendix in the Appeal Brief. Apparently the Board believes there must be a reference to same, even if there is no such appendix. However the rules clearly do not contemplate or require this. There is no indication that one must state that there is no such related proceedings appendix. It is clear that the absence of an appendix and the statement there are no related appeals and interferences (see page 1 of the Brief) indicates there is none.

Rule 41.37(x) does not say that one must include such a heading if there is no such appendix.

Moreover, section (c) of Rule 41.37 says "The brief shall contain the following items under appropriate headings..." Clearly if there is no such item, there is no requirement for the heading. Therefore it is believed that this portion of the Notification is clearly superfluous and incorrect.

Petition Request

It is respectfully requested that the originally filed Appeal Brief be entered since it complied with the rules, that the Notification of Non-Compliant Appeal Brief be canceled or quashed, and this case be decided by the Board promptly.

It is further pointed out that the delay by the Patent Office in issuing the Notification, which is not compliant with the rules, increased the time before which any patent might begin its patent term from this application, thereby prejudicing Applicant.

New Appeal Brief

Applicant has also filed (separately) a new Appeal Brief in this case merely in order to expedite prosecution. It is respectfully petitioned that this be entered under this Petition if the original Appeal Brief is not so entered.

Petition Fee

37 CFR §41.3 paragraph (c) says "The fee set in §41.20(a) must accompany any petition under this section except no fee is required for a petition under this section seeking supervisory review." If indeed this is considered a case for "supervisory review" then no such fee is required. It is therefore requested that no such fee be charged. However if this is not a case for supervisory review, the undersigned gives permission to charge **Deposit Account No. 03-1952** under the name of Morrison & Foerster LLP for the petition fee of \$400 under §41.20, and any other amounts considered due for this petition, referencing Attorney Docket No. 549222000101.

Dated: April 12, 2007

Respectfully submitted,

By 
Norman R. Klivans

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